

HONORABLE JUDGE BENJAMIN H. SETTLE
MAGISTRATE JUDGE J. RICHARD CREATURA

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

WILLIAM MARTIN,

Plaintiff,

v.

JEFF UTTECHT, et al.,

Defendants.

NO. 3:18-cv-05929-BHS-JRC

DEFENDANTS' REPLY TO
PLAINTIFF'S RESPONSE TO
THEIR MOTION FOR
SUMMARY JUDGMENT

**NOTE ON MOTION
CALENDAR: April 3, 2020**

I. REPLY

A. Video Evidence Confirms Wonders' Pat Searches of Martin Were Objectively Brief, Appropriate, and Routine

Martin's litigation is the continuation of a series of allegations that led the Department to conduct three separate PREA investigations, each of which determined Martin's allegations to be unfounded. Dkt. No. 37, Declaration of Stephen Bolinger (Bolinger Decl.) ¶¶ 9–12, 15–16.

The second of these investigations focused on Martin's claim that Jerry Wonders groped Martin during a pat search on September 6, 2018. Dkt. No. 36, Declaration of Marko Pavela (Pavela Decl.) Exhibit 3; Bolinger Decl. ¶ 12. In conducting this investigation, the Department reviewed surveillance video of the exact pat search where Martin accused Wonders of groping Martin. Bolinger Decl. Exhibit 4. Not only did the video exonerate Wonders internally of any inappropriate groping, but also led to an observation that "if any

1 scrutiny could be made, [these pat searches] were not as thorough as they might have been.”

2 Dkt. No. 38, Declaration of Joshua Cruger (Cruger Decl.) Ex. 1.

3 Because the accusation against Wonders was so demonstrably false, Martin was
4 infracted for providing false information during a sexual misconduct investigation.
5 Bolinger Decl. ¶ 14. Such an action is a rare response from the Department, reserved for only
6 the most obvious instances of lying to investigators. *Id.*

7 This same video has now been put before the Court, and Martin has had a chance to
8 review it as well. Pavela Decl. ¶ 15; Second Declaration of Marko Pavela ¶ 3. Through
9 response, Martin maintains this video captures “sexually inappropriate behavior.” Dkt. No.
10 40, at 6. Defendants submit that review of this video will allow the Court to determine that
11 Wonders’ pat searches of Martin were objectively brief, appropriate, and routine; and that
12 Martin’s bare accusations are not the type of evidence that would allow Martin’s claims of
13 “groping” to survive summary judgment here. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S.
14 242, 249 (1986) (“[T]here is no issue for trial unless there is sufficient evidence favoring the
15 nonmoving party for a jury to return a verdict for that party.” (citation omitted)).

16 **B. The Remainder of Martin’s Claims, Even Viewed in the Light Most Favorable to**
17 **Martin, are Insufficient to Survive Summary Judgment**

18 The remainder of Martin’s response is dedicated to either accusing the Defendants of
19 lying about insulting Martin, or of participating in a conspiracy to fraudulently document
20 various encounters between Martin and staff. But, and as argued previously, name calling,
21 even if this had occurred, is not enough to invoke the Constitution. *Somers v. Thurman*,
22 109 F.3d 614, 624 (9th Cir. 1997) *cert. denied*, 522 U.S. 852 (1997). As to Martin’s
23 conclusory allegations of fraud, such bare claims are insufficient to create the genuine issues
24 of material fact Martin’s lawsuit requires to survive summary judgment here.

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1 *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990); *see also Ashcroft v. Iqbal*, 556 U.S.
 2 662, 678 (2009) (Articulating the standard for pleading under Rule 8, the Court holds a
 3 Plaintiff must provide “more than an unadorned, the-defendant-unlawfully-harmed-me
 4 accusation.”).

5 II. CONCLUSION

6 In spite of video evidence demonstrating that Wonders’ pat searches of Martin were
 7 objectively brief, appropriate, and routine, Martin has doubled down on false accusations
 8 against the Defendants. Accordingly, Defendants once again request dismissal of Martin’s
 9 claims against them, with prejudice.

10 RESPECTFULLY SUBMITTED this 25th day of March, 2020.

11 ROBERT W. FERGUSON
 12 Attorney General

13 *s/ Marko L. Pavela*
 14 MARKO L. PAVELA, WSBA #49160
 15 Assistant Attorney General
 16 Corrections Division
 17 P.O. Box 40116, Olympia, WA 98504-0116
 18 360-586-1445
 19 Marko.Pavela@atg.wa.gov
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